

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed October 4, 2004. Reconsideration and allowance of the application and pending claims are respectfully requested.

I. Claim Rejections - 35 U.S.C. § 103(a)

A. Rejection of Claims 1-8 and 10-19

Claims 1-8 and 10-19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over McCall, et al. ("McCall," U.S. Pat. No. 6,152,591) in view of Herz, et al. ("Herz," U.S. Pat. No. 6,571,279). Applicant respectfully traverses this rejection.

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed

combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, the references do not teach or suggest each of the limitations of Applicant's claims. In addition, there is no motivation in the art for modifying the references in the manner suggested in the Office Action. Applicant discusses the claims and the applied references in the following.

1. Claims 1-11

Independent claim 1 provides as follows (emphasis added):

1. A method for *providing customized menu service for a restaurant drive-thru customer in a vehicle*, the customer making menu selections from a main menu the method comprising:

scanning a unique customer identity code from a machine readable identity means attached to the customer vehicle when the vehicle enters the restaurant drive-thru during a first visit to the restaurant drive-thru;

creating a customer profile corresponding to said unique customer identity code;

recording the user menu selections from the main menu during said first visit in said customer profile;

scanning said unique identity code from said machine readable identity means when the vehicle enters the restaurant drive-thru during a subsequent visit to the restaurant drive-thru;

retrieving said customer profile corresponding to said unique customer identity code;

creating a custom menu from said customer profile; and,

displaying said custom menu to the customer during said subsequent visit to the restaurant drive-thru.

The Office Action argues that the McCall reference teaches all of the limitations of claim 1 except reading a customer identity code from a machine-readable identity means attached to the customer vehicle. A review of the McCall reference, however, reveals that this is not the case.

McCall discloses an interactive graphics display for a gas station fuel pump. As is described by McCall, incorporating a new graphics display into an older, conventional fuel dispenser system is very difficult. McCall, column 1, lines 36-38. With McCall's system, however, such retrofitting is less difficult. As is described by McCall in column 2, lines 60-67:

The foregoing problems are solved and a technical advance is achieved by an interactive graphics display system for a fuel dispenser that provides a video interface with the customer. The system easily retrofits onto an existing, convention fuel dispenser by interacting with a customer activated terminal located in the conventional dispenser.

From the above, it is clear that McCall is only concerned with providing an interactive display on a fuel pump and, more particularly, retrofitting such a display onto a fuel pump. Therefore, contrary to that recited in Applicant's claim 1, McCall does not disclose a method for providing customized menu service for a restaurant drive-thru customer in a vehicle. Because of this fact, McCall fails to teach or suggest several of Applicant's explicit claim limitations. For example, McCall does not teach or suggest "scanning a unique customer identity code from a machine readable identity means attached to the customer vehicle when the vehicle enters the restaurant drive-thru", as is recited in claim 1. First, McCall does not teach scanning any code whatsoever. In McCall's system, no such automation is provided. Second, McCall is silent about

performing such scanning when the customer vehicle enters a restaurant drive-thru. Although the Herz reference is cited to support the rejection, Applicant notes that Herz is likewise silent about scanning a code when a customer vehicle enters a restaurant drive-thru. Given that neither reference accounts for these limitations, claim 1 is allowable for at least that reason.

Applicant further notes that neither McCall nor Herz teach or suggest “scanning said unique identity code from said machine readable identity means when the vehicle enters the restaurant drive-thru during a subsequent visit to the restaurant drive-thru” or “displaying a custom menu to the customer during the subsequent visit to the restaurant drive through”.

McCall’s and Herz’s failure to anticipate the restaurant drive-thru application is significant. More particularly, it would not have been obvious to a person having ordinary skill in the art to apply McCall’s and Herz’s teachings to a restaurant drive-thru application. Simply stated, without a teaching or suggestion in the art to make such a modification, a person having ordinary skill simply would not be motivated to do so. Applicant further notes that the nature of the drive-thru application is totally distinct from that described by McCall and Herz. Again, McCall only discusses displays on gas pumps. Herz, on the other hand, discusses advertising media such as roadside billboards.

Referring to dependent claim 4, neither McCall nor Herz says anything about a “machine readable bumper sticker”.

Regarding dependent claim 5, neither McCall nor Herz says anything about creating a “suggested new item list” or displaying such a list to a customer.

Regarding dependent claim 10, neither McCall nor Herz says anything about “recording a time value corresponding to the customer menu selections made during said first visit”.

2. Claim 12

Regarding claim 12, neither McCall nor Herz teach or suggest “scanning a license plate number from the customer vehicle when the vehicle enters the restaurant drive-thru with scanning means during a first visit to the restaurant” or “scanning said license plate number from the customer vehicle when the vehicle enters the restaurant drive-thru during each of a plurality of subsequent visits to the drive-thru”. Applicant refers back to the discussion provided above in relation to claim 1.

3. Claims 13 and 14

Regarding claim 13, neither McCall nor Herz teach or suggest “scanning a unique customer identity code from a machine readable identity means attached to the customer vehicle when the vehicle enters the restaurant drive-thru”. Applicant refers back to the discussion provided above in relation to claim 1.

4. Claims 15 and 16

Regarding claim 15, neither McCall nor Herz teach or suggest “a computer program product for providing a custom menu to a restaurant drive-thru customer” that includes code that causes a computer to “cause scanning means to scan a unique customer identity code from a machine readable identity means attached to the customer vehicle when the vehicle enters the restaurant drive-thru” or “scan said unique customer identity code from said machine readable identity means when the vehicle enters the

restaurant drive-thru during a second visit to the drive-thru”. Applicant refers back to the discussion provided above in relation to claim 1.

5. Claim 17

Regarding claim 17, neither McCall nor Herz teach or suggest “a computer program product for providing customized menu service to a restaurant drive-thru customer” that includes code that causes a computer to “scan a license plate number from a vehicle when the vehicle enters the restaurant drive-thru” or “scan said license plate number from the vehicle during each of a plurality of subsequent visits to the restaurant drive-thru”. Applicant refers back to the discussion provided above in relation to claim 1.

6. Claims 18 and 19

Regarding claim 18, neither McCall nor Herz teach or suggest “a computer program product for providing a custom menu to a restaurant drive-thru customer” that includes code that causes a computer to “cause the scanning means to scan a unique customer identity code from a machine readable identity means attached to the customer vehicle when the vehicle enters the restaurant drive-thru”. Applicant refers back to the discussion provided above in relation to claim 1.

7. Conclusion

In summary, it is Applicant’s position that a *prima facie* case for obviousness has not been made against Applicant’s claims. Therefore, it is respectfully submitted that each of these claims is patentable over McCall and Herz and that the rejection of these claims should be withdrawn.

B. Rejection of Claim 9


Claim 9 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over McCall in view of Herz and further in view of Storey (U.S. Pat. No. 6,578,012). Applicant respectfully traverses this rejection.

As is described above in reference to independent claim 1, McCall and Herz do not teach or suggest explicit limitations of Applicant's claims. In that Storey does not remedy this deficiency of the McCall and Herz references, Applicant respectfully submits that claim 9, which depends from claim 1, is allowable over the McCall/Herz/Storey combination for at least the same reasons that claim 1 is allowable over McCall and Herz.

CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Rodack', is written over a horizontal line.

David Rodack
Registration No. 47,034